



Montana Department of
ENVIRONMENTAL QUALITY

SDMS Document ID



2030881

Judy H. Martz, Governor

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • www.deq.state.mt.us

August 18, 2003

Mayor Berget and Libby City Council
PO Box 1428
Libby, MT 59923

2003 AUG 20 PM 2:10
EPA
SUPERFUND BRANCH

RE: Response to July 28, 2003, letter

Dear Mayor Berget and Council Members:

This letter is written in response your July 28, 2003, letter sent in reply to my July 7, 2003, letter regarding violations caused by the work at the boat ramp. The letter expressed your disappointment that no one from the Montana Department of Environmental Quality (Department) immediately contacted the City of Libby (City) to discuss the findings of the field investigation at the boat ramp site. Typically, when Enforcement Division (ENFD) staff conducts an investigation, the alleged responsible party is contacted to obtain an understanding of both sides of the story. In this instance, Mr. Coleman deviated from that approach for several reasons. Mr. Coleman's site visit was later in the day and he did not know the exact time he would be at the site. Mr. Coleman had also made a prior commitment to contact and then meet with the anonymous complainant who had expressed concerns about possible repercussions from the City for filing the complaint with the Department. Mr. Coleman did not want to create a contentious situation between the complainant and City staff and he wanted to respect the wishes of the complainant. Mr. Coleman did contact Dan Thede, Supervisor, City Services, and discussed the situation prior to sending the violation letter. Mr. Coleman and the rest of the ENFD staff have been reminded that when conducting a field investigation, it is necessary to take the time to contact all related parties to examine and discuss the allegations at the site of the alleged violations.

Your letter also states that my July 7, 2003, letter was in error. You accurately describe the fact that a few pieces of asphalt, which had already been at the site, may have been dislodged from the bank. You also clarified that the vermiculite-containing fill was not brought into the site and the City was not aware of the presence of tremolite asbestos. The asphalt in the fill material is a minor violation of the Solid Waste Management Act, Section 75-10-221, MCA. And, luckily the EPA will take responsibility and remove the tremolite and asphalt-containing fill.

Please allow me to clarify the Department's interpretation and application of the Water Quality Act (WQA) and the purpose of my July 7, 2003, letter. Section 75-5-605(1), MCA, of the WQA states that it is unlawful to place wastes where they will cause pollution of state waters. The WQA violation described in my letter focused on the regrading that caused sediment to enter the river. Sedimentation is a major surface water pollution problem in Montana. The Department has implemented a storm water pollution control program that is designed to eliminate or minimize the volume of sediment that enters state waters from construction projects. Although a storm water permit may not be required for this project, the City still has the responsibility to comply with the WQA and ensure that sediment (waste) does not enter state waters.

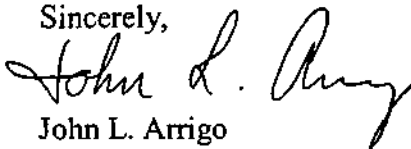
Mayor Berget
August 18, 2003
Page 2

It is apparent from the photographs that regrading of the area caused fill to slough over the bank where it could enter the river. Although the U.S. Corps of Engineers unpredictably raised the river flow, it is also clear from the photographs that a portion of the loose fill on the bank was eroded into the river. This placement of sediment wastes where it will cause excess turbidity and pollution is a violation of the WQA. The violation letter does not constitute a "citation" or a formal enforcement action. The purpose of the letter was to offer compliance assistance by notifying the City of the violation and describing the violation and the actions necessary to return to compliance. If the problem is not corrected or if the City has a similar violation in the future, a formal enforcement action may be initiated.

In closing, the letter states that you would expect someone from the Department to contact the City and a representative from the EPA in order to walk over the River Park property. On July 9, 2003, Mr. Coleman spoke with Courtney Zamora of the EPA and discussed what Best Management Practices (BMPs) would be most effective in stabilizing the site. It is also the Department's understanding that the BMPs have been implemented and the EPA is going to remediate the site in the near future. Because of these facts, it would appear that the EPA has or will be addressing the Department's concerns and we trust the problem will be solved. However, if you would still like a Department representative to examine the site and verify that the remediation and riverbank stabilization is adequate, please feel free to contact Mr. Coleman at (406) 444-1453 and he will gladly arrange for a site visit.

I appreciate the time Mayor Berget took to talk to me on the phone and to discuss the boat dock situation. Our goal is to work to obtain compliance with the environmental laws administered by the Department and we especially need the assistance of local governments in this effort. I appreciate the cooperation and assistance provided by the City and Lincoln County staff in the past and I am confident this contribution will continue in the future. I will also work to improve communication between all parties involved. If you would like to discuss this matter further, please feel free to contact me.

Sincerely,



John L. Arrigo
Administrator
DEQ Enforcement Division
P.O. Box 200901
Helena, MT 59620
(406) 444-5327
jarrigo@state.mt.us

cc: Governor Judy Martz
Jan Sensibaugh, Director DEQ
Craig French, DEQ Remediation Division
Dan Thede, Supervisor Libby City Services, P.O. Box 1428, Libby, MT 59923
Lincoln County Sanitarian, 418 Mineral Ave., Libby, MT 59923
Jim Christensen (EPR-SR), US EPA Region 8, 999 18th St., Suite 300, Denver, CO 80202-2466